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ROBERT M BAUER, ESQ.  
LACKENBACH SIEGEL, LLP  
1 CHASE ROAD  
SCARSDALE NY 10583

In re Application of:  
Jani Ekman, et al.  
Application No. 09/937,047  
Filed: January 8, 2002  
For: **HANDOVER IN A MOBILE  
COMMUNICATION SYSTEM USING  
CONFERENCE FACILITY**

DECISION  
ON PETITION

This is a response to the Petition to Withdraw Holding of Abandonment, filed May 27, 2005.

This application became abandoned for failure to timely submit the issue fee due in response to the Notice of Allowance and Issue Fee Due mailed January 10, 2005. A Notice of Abandonment was mailed on May 16, 2005.

The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the Practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received", 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c), section II. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Petitioner asserts that the Notice of Allowance mailed January 10, 2005 was never received because it was mailed to an improper correspondence address. In support thereof, Petitioner asserts that a communication in regard to a change of correspondence address was filed August 19, 2004. Petitioner states that the Patent and Trademark Office (PTO) failed to timely change the address until after the mailing of the Notice of Allowance and Issue Fee Due as evidenced by copies of the "Notice of Acceptance of Power of Attorney" that was mailed to applicant on January 19, 2005.

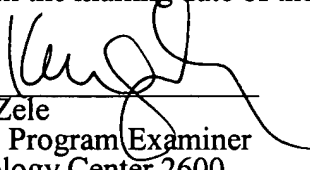
A review of the file does find an irregularity in the correspondence address. It is clear that the PTO failed to timely change the correspondence address of record, and therefore applicant's failure to receive the Notice of Allowance and Issue Fee Due was due to inadvertent PTO error. The PTO regrets any inconvenience to Petitioner.

The Notice of Abandonment mailed May 16, 2005 is hereby vacated and the holding of abandonment withdrawn. Also, the Notice of Allowance and Issue Fee Due mailed January 10, 2005 is hereby vacated.

The petition is **GRANTED**.

Since it has been established that the Notice of Allowance was not received, it is presumed that Applicant also failed to receive the Notice of Allowability. The application will be forwarded to the Technology Center's technical support staff for mailing of a new Notice of Allowance and Issue Fee Due, as well as a copy of the Notice of Allowability to the new correspondence

address. The three (3) month non-extendable time period for paying the issue fee will be set to run from the mailing date of the new Notices.



Krista Zele  
Special Program Examiner  
Technology Center 2600  
Communications